

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MIKE AARLIE,  
Plaintiff,  
vs.  
MIKE ATKINS,  
Defendant.

NO. CV-06-0234-JLQ

ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS WITH  
PREJUDICE

BEFORE THE COURT is Defendant's Motion To Dismiss With Prejudice (Ct. Rec. 45). The court granted the Defendant's Motion For Expedited Hearing thereto, (Ct. Rec. 52), and directed that "[o]n or before August 17, 2007, the Plaintiff shall file and serve on counsel for the Defendant his response, if any, to the Motion To Dismiss" and warned that "[f]ailure to properly respond shall result in dismissal of this action with prejudice." In addition, the court noted the Plaintiff's Objections To Defendant's Written Interrogatories (Ct. Rec. 44) and advised the Plaintiff that while he may invoke the Fifth Amendment and refuse to answer discovery, "such invocation may result in dismissal of his civil action." The court provided the Plaintiff an additional ten days from the date of the Order to reconsider his claim of Fifth Amendment privilege. To date, the Plaintiff has not responded to the court's Order.

The Defendant seeks an Order dismissing the Plaintiff's remaining claims because the Plaintiff failed to appear for his deposition scheduled for July 18, 2007 and failed to make arrangements for his deposition to be taken prior to July 31, 2007, as directed by the court in its Order Re: Depositions dated July 22, 2007. In addition, according to information provided in the Declaration of G. Scott Beyer (Ct. Rec. 46) filed in support of the Defendant's Motion To Dismiss, the Plaintiff has failed to adequately participate in pre-trial discovery. The Plaintiff has failed to provide initial disclosures, failed to

1 respond to written interrogatories, failed to provide a final witness list on or before July  
2 15, 2007 as required by this court's Scheduling Conference Order, and failed to arrange  
3 for his deposition to be taken as directed by the court. It is noted that the discovery cut-  
4 off period was July 31, 2007 and a jury trial had been scheduled for October 1, 2007, in  
5 Richland, Washington.

6 For the foregoing reasons, especially the Plaintiff's refusal to make himself  
7 available to be deposed by Defendant's counsel and the resulting prejudice to the  
8 Defendant, the Defendant's Motion to Dismiss is **GRANTED** and the Plaintiff's  
9 Amended Complaint and claims contained therein are **dismissed with prejudice**.

10 **IT IS SO ORDERED.** The Clerk of this court shall enter this Order, enter  
11 judgment dismissing the Amended Complaint and the claims therein with prejudice,  
12 forward copies to Plaintiff and counsel for the Defendant, and close this file.

13 **DATED** this 27th day of August 2007.

14 s/ Justin L. Quackenbush

15 JUSTIN L. QUACKENBUSH  
16 SENIOR UNITED STATES DISTRICT JUDGE  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28